

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections

Division 8 California Prison Industry Authority

NOTICE IS HEREBY GIVEN that the California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) pursuant to the authority granted by Penal Code (PC) Sections 2801 and 2808 in order to implement, interpret and make specific PC Sections 290, 2053, 2702, 2801, 2805, 2808, and 5071, propose to amend Section 8000 of Article 1, and adopt Sections 8004, 8004.1, 8004.2, 8004.3 and 8004.4 of new Article 3, Chapter 1 of the California Code of Regulations (CCR), Title 15, Division 8 concerning CALPIA Inmate Work/Training and Education.

PUBLIC HEARING:

Date and Time: July 30, 2012 – 10:00 am to 11:00 am
Place: CALPIA Central Office
560 East Natoma Street
Folsom, CA 95630
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close, **July 30, 2012 at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CALPIA, Legal Services Unit, Regulation and Policy Manager, 560 East Natoma Street, Folsom, CA 95630; by fax at (916) 358-2732; or by e-mail at CALPIAregs@calpia.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action or questions of substance of the proposed regulatory action to:

Pam Cantelmi
Staff Counsel
California Prison Industry Authority
560 East Natoma Street, CA 95630
Telephone (916) 358-1711

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

Lynn Braydis
Legal Secretary
California Prison Industry Authority
Telephone (916) 358-1711

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500 through 17630.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed in accordance with Government Code Sections 17500 through 17630: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the State: *None*

EFFECT ON HOUSING COSTS:

The CALPIA under the authority of the PIB has made an initial determination that the proposed action will have no significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The CALPIA under the authority of the PIB has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of state prisons.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT:

The CALPIA has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California, or the health and welfare of California residents, worker safety, or the State's environment.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The CALPIA under the authority of the PIB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES:

The CALPIA under the authority of the PIB has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The CALPIA under the authority of the PIB has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The CALPIA under the authority of the PIB must determine that no reasonable alternative considered by the CALPIA, or that has otherwise been identified and brought to the attention of the CALPIA, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The CALPIA under the authority of the PIB has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the CALPIA's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the CALPIA website <http://www.calpia.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the CALPIA's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the PIB may adopt the proposed regulations substantially as described in this Notice. If the CALPIA under the authority of the PIB makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the PIB adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The CALPIA under the authority of the PIB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to amend Section 8000, of Article 1, and adopt Sections 8004, 8004.1, 8004.2, 8004.3 and 8004.4 of new Article 3, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA Inmate Work/Training and Education. The Office of Administrative Law (OAL) has published a Determination regarding CALPIA policies (OAL File No. CTU2008-1014-01), determining that CALPIA job assignments meet the definition of a regulation pursuant to Government Code Section 11342.600. These regulations are meant to address this Determination by adopting regulations pursuant to the Administrative Procedure Act (APA), that specifically address CALPIA's Assignment Practices for Inmate Work and Training. Additionally, these regulations address OAL's Determination (OAL File No. CTU2010-1007-01) which determined that CALPIA GED Requirements meet the definition of a regulation pursuant to Government Code Section 11342.600. With the filing of regulations, CALPIA addresses CALPIA's GED requirement with regards to the hiring process and the educational requirement regarding inmate pay.

The policies of the CALPIA have been vetted through the public process of the PIB, as required in Penal Code (PC) 2808 (h) and (i), and now are being promulgated through the regulatory process as specified in the APA. The PIB approved the filing of these regulations at their Board Meeting on April 27, 2012. The PIB's Record of Vote is filed as an attachment to the Initial Statement of Reasons. The vote of the PIB was unanimous for the approval of the regulations to be filed with OAL.

PC Sections 2801 and 2808 provide CALPIA with implied rulemaking authority. PC Section 2801 establishes that CALPIA is to create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills.

The proposed regulatory actions incorporate policy decisions regarding inmate hiring standards. The proposed regulatory actions set forth inmate educational, skill and behavioral requirements necessary for CALPIA work assignments. The proposed regulatory actions will not adversely affect the health and welfare of California residents, worker safety, or the State's environment. The proposed regulatory actions will clarify and standardize the hiring standards for inmate positions with CALPIA.

- **Section 8000 is amended** to add the definitions and merge them alphabetically with those that currently exist in the regulations.
- **New Section 8004 is adopted** to implement, interpret and make specific the provisions of PC 2801, specifically 2801(b). The regulations provide clarity regarding inmate non-eligibility for a CALPIA assignment. They specify that inmates convicted of specific crimes, who are otherwise eligible for a CALPIA assignment, are to be restricted, and lay out factors that shall be taken into consideration when determining, on a case-by-case basis, the assignment or re-assignment of an inmate to a CALPIA program. They specify that CALPIA inmates who are participating in work/training programs and are currently placed on Immigration and Customs Enforcement (ICE) Hold status shall not be issued external accredited certifications.
- **New Section 8004.1 is adopted** to create hiring standards and requirements for inmate workers so that CALPIA is able to fill vacant job/training positions based upon the following standards: (1) Skill level; (2) Behavior and relationships with others; (3) Attitude and adaptability; (4) Work/training habits; (5) Formal

education and training; and (6) Ethnic Balance. They establish minimum intake requirements for any CALPIA assignment or apprenticeship/training position. The regulations establish a minimum education requirement for inmates seeking assignment to CALPIA positions.

- **New Section 8004.2 is adopted to make specific** PC Section 2801 regarding inmate recruitment and appointment process for CALPIA positions.
- **New Section 8004.3 is adopted** to make specific PC Section 2801 specifically, creating a condition of participation, such as drug/alcohol testing if there is a reasonable suspicion.
- **Subsection New Section 8004.4 is adopted to make specific** PC Section 2801 specifically, the allocation of the Inmate Workforce.

EVALUATION OF INCONSISTENCY/INCOMPATABILITY WITH EXISTING REGULATIONS:

The CALPIA has determined that these proposed regulations are not inconsistent or incompatible with existing state laws and regulations.